

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

v.

EDDIE ANDREW GORDON

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2:05-CR-290-WKW

**RESPONSE TO MOTION FOR NEW TRIAL
AND MOTION FOR JUDGMENT OF ACQUITTAL**

COMES NOW the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and files its response to the Defendant's Motion for a New Trial and Motion for Judgment of Acquittal filed on July 26, 2007, as follows:

1. The Defendant argues that the government failed in its burden of proof of showing that Gordon had a prior felony conviction. This claim fails because Gordon admitted to having the prior felony convictions as set out in the Indictment under oath, on cross examination.(See Transcript Volume II at 241-242.)

2. The Defendant argues that the Court erred in allowing the testimony of Detective Green, in which he related a telephone conversation between himself and Gordon in which Gordon admitted ownership/possession of the firearm charged in the indictment, to be presented to the jury. This claim fails because Gordon was not in custody at the time of the conversation and voluntarily contacted Detective Green; therefore, pursuant to United States v. Acosta, 363 F.3d 1141, 1148 (11th Cir. 2004), it was unnecessary for Detective Green to apprise Gordon of his *Miranda* rights.

3. The Defendant argues that the weight of the evidence was insufficient to support the jury's finding of guilt because a defense witness testified that the firearm was

his and Gordon had no knowledge of it and Gordon testified that he had no knowledge of it. This claim fails because the jury was presented with evidence that established the elements of the offense: that Gordon was a convicted felon prior to his possession of the firearm (See Transcript Volume II at pages 241-242.); that the firearm had travelled in and affected interstate commerce (See Transcript Volume I at pages 91-92.); and that Gordon knowingly possessed the firearm on November 22, 2004 (See Transcript Volume I at page 29, 35-36, 97; and Volume II at page 184-185, 204-205.) The jury had the opportunity to evaluate the witnesses and their testimony, to include that of defense witness Tavian Jackson who testified to placing the firearm in the nightstand drawer November 22, 2004, and to not removing it from the drawer, the testimony of Officer Gambrel that he found the firearm under a towel lying next to Gordon on the bed, and Gordon's testimony that he never saw a gun, drugs or a towel lying on the bed next to him. The jury could reasonably conclude that the gun was laying under the towel seen by Gambrel, that Gordon had placed it there after removing it from the nightstand drawer where Jackson had placed it, and that Gordon had a vested interest in not telling the truth of the matter at trial.

4. Finally, the Defendant argues that he is entitled to a judgment of acquittal or new trial because the Court erred in not suppressing the evidence of the firearm and allowing its presentation to the jury, even though the warrantless search was unreasonable and in violation of the Defendant's Constitutional rights. This argument, too, must fail as it has been previously litigated, is not properly raised in this motion and, even if the aforementioned were not true and correct, the Defendant testified under oath that he gave unqualified permission for a search of his motel room. (See Transcript Volume II at page 218 and 256.)

Respectfully submitted, this the 11th day of September, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Everett M. Urech.

Respectfully submitted,

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